

**LEASE AGREEMENT BETWEEN
SHELBY COUNTY GOVERNMENT
AND
BOLTON YOUTH ATHLETIC ASSOCIATION**

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**LEASE AGREEMENT BETWEEN
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AND
BOLTON YOUTH ATHLETIC ASSOCIATION**

Agreement of Lease to commence November 1, 2004, by and between the **BOLTON YOUTH ATHLETIC ASSOCIATION**, herein referred to as "the Association" and Shelby County Government, herein referred to as "**COUNTY**."

THIS AGREEMENT is made by and between the government of Shelby County, Tennessee ("Shelby County"), and the Bolton Youth Athletic Association (the "Athletic Association"), a Tennessee non-profit corporation. [501(c)(3) currently in "**Mid-South Youth Baseball, Inc.**"]

RECITALS:

1. Shelby County owns certain real property located in northeast Shelby County near the intersection of Brunswick Road and Pleasant Ridge Road, which is dedicated for uses as public park areas under the control of the Shelby County Conservation Board (the "Property").

2. Shelby County, the Bolton Youth Athletic Association and the Bolton Civic Association heretofore have worked cooperatively to operate and maintain use of the Property as a baseball complex, playground, walking park and civic center for seniors and others. Bolton Youth Athletic Association has paid the Bolton Civic Group for the use thereof and the Bolton Civic Club has coordinated certain repairs and maintenance of the baseball fields and Park Complex and related improvements and facilities for the use and benefit of all of the citizens of Shelby County.

3. Approximately fifteen (15) acres of the total forty (40) acres of the Property is developed as a community park, including baseball and teeball fields, a concessions building, a community civic center building, walking trails and playground with lighting systems, paved

parking, appropriate roadways for access, circulation and maintenance, and restrooms (hereinafter referred to as the "Bolton Park").

4. The Bolton Park facility is currently operated and partly maintained by or under the supervision of the Bolton Civic Association upon agreement, terms and conditions between Bolton Community Civic Club and Shelby County Conservation Board.

5. The Bolton Youth Athletic Association desires to be primarily responsible for funding, operation, use and maintenance of the Bolton Park Complex in accordance with the terms and conditions set forth herein, and to coordinate with other community non-profit groups and associations operating in the area to allow them use of the facilities consistently with or similar to their present use.

NOW, THEREFORE, for and in consideration of the above stated purposes, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENTS:

1. **Description of the Bolton Park Area.** That part of the Property which comprises Bolton Park and is the Leased premises subject to this Agreement is more particularly described by metes and bounds in Exhibit 1A attached hereto and incorporated herein by reference, and is also specifically designated on the map attached hereto as Exhibit IB and incorporated herein by reference. The parties hereby acknowledge that approximately fifteen (15) acres of Bolton Park is currently developed, and the remainder of the 40 acres complex remains undeveloped. Any future development must be approved by Shelby County, provided that the Association is maintain and insure only that portion which is actually used.

The present Improvements for which a lease is hereby granted for the use of the Athletic Association, covenants thereto, and subject to any present easements and encumbrances, include the following:

Specifically, the used portion of the premises includes: two (2) baseball fields and one (1) tee ball field, a concessions building with two restrooms, a community civic center building, walking trails and playground with lighting systems, paved parking, and appropriate roadways for access, circulation and maintenance. (hereinafter the "Improvements").

In addition to the present "Improvements" Bolton Youth Athletic Association shall have the right, but not the obligation, to construct additional improvements to the Bolton Park Complex, upon any or all of the entire forty (40) acres tract, at their cost, and subject to the approval of the County. All improvements revert to the County upon any breach or termination of this Use Agreement.

Bolton Park Complex shall remain open and available for use by the general public subject to fees and conditions necessary to fund the operation and maintenance, as determined by the Bolton Youth Athletic Association. Shelby County retains the right to review any fees and conditions set by the Bolton Youth Athletic Association, provided that in lieu of agreement, the matter shall be determined by the County Contracts Administrator or other designee of the County Mayor. Shelby County also retains the right to review and approve all designs, plans and specifications for the entire Complex, including the location of any wireless communications tower.

2. **Operation and Maintenance of the Bolton Park Complex by the Lessor.**

2.01. **County Improvements to be Accepted in "As Is" condition.** The Athletic Association agrees to accept the subject premises in their present state and condition, provided however, Shelby County acknowledges and agrees to: (1) maintain roads and drives; (2) repair any

defects in the current sewer or septic system; and (3) solely maintain insurance or self-insurance on premises not used by the Association, but within the park complex.

2.02. **Operation and Maintenance of Premises and Facilities.**

The Bolton Youth Athletic Association hereby agrees to assume full responsibility and liability for the operation and maintenance of the Bolton Park Complex in a safe and cost-efficient manner, remaining OPEN TO ALL CITIZENS OF SHELBY COUNTY, as provided herein. Failure to maintain either safe, reasonable or cost efficient operation shall be deemed grounds for default. Bolton Youth Athletic Association shall operate and maintain the Park Complex and Improvements and premises at a similar level and condition at which the Association accepts the premises. However, the Association shall not be required to comply with the Shelby County Purchasing Policies and Procedures. The Bolton Youth Athletic Association will make good faith efforts to allow other non-profit organizations and the general public to use the Improvements similar to the use of a public park, subject to reasonable fees for use of the baseball and teeball fields, and other fees after review by County Government. The parties agree that a reasonable effort will be made to accommodate use by the general public and particularly the Bolton Civic Association and the Ellendale Little League Baseball Association at a level of use similar to their prior use, subject to reasonable fees. The County retains the right to right to allow usage by said organizations, provided that the cost of their use shall cover the expenses and pro-rata funding for the operation and maintenance by the Association. Any recommendation by the County as to the use by any other entity is subject to final decision by the County Mayor or his designee.

3. **Financial Terms for the Use Agreement for the Park and County Improvements.**

There shall be no monetary consideration paid by the Association for the Lease and Use

of the County Improvements; provided however, that the parties acknowledge that the operation and maintenance of the facilities by the Leasee and the public use thereby confers a benefit and consideration to Shelby County.

No funds for the operation and maintenance of the Bolton Park Complex shall be provided by Shelby County, the Shelby County Conservation Board or other Shelby County Governmental entity, except for improvements to the infrastructure, including roadway and parking area repaving. No monies will be budgeted by Shelby County Government or the Shelby County Board of Commissioners for encumbrances and/or expenditures attributable to the Bolton Park Complex, except as specifically stated herein or unless this Use Agreement is modified, in writing. The appropriation of monies to repair conditions in need of repair at the time of execution of the Agreement is excluded, including any defective sewer systems on the premises. Any other appropriations to the Association by Shelby County Government shall be construed as a gift to a charitable corporation or entity. The Association covenants and agrees to obtain prior approval of any major alterations or improvements to the Property, regardless of any funding source, including donations and gifts. Any improvements adding a value or \$25,000 shall be reviewed and approved by the Shelby County Engineer.

These covenants and conditions by the Bolton Youth Athletic Association shall be in addition to, separate and distinct from all obligations and amounts due from the Association pursuant to any other financing and cost agreements, and third parties are bound by this Agreement.

The obligation of the Association for the payment of any funds, and all other covenants and terms related to operation and maintenance of the Improvements and Park Complex areas, are specifically limited to the obligation contained herein and are made in good faith by the Bolton

Youth Athletic Association for the purposes intended herein, including furthering the benefit of the Association, Shelby County, Tennessee and the citizens of Shelby County. The benefits of this Agreement inures to any and all citizens of Shelby County, Tennessee, provided that Shelby County Government retains the right to enforce the terms as provided herein. It is expressly understood between and agreed to by the County and the Association that there shall be no personal liability of the present members of the Bolton Youth Athletic Association or of the individuals who serve on its board of directors for any of the financial obligations of the Association set forth herein. However, the Association shall provide a sufficient Letter of Credit, Performance Bond, or Insurance, as determined by County Risk Management for the faithful performance of its duties as outlined herein.

Shelby County retains no obligation to operate and maintain the Park area, or provide any funding or assistance, except compliance with this Agreement, interim inspections and review of any requested alterations and improvements.

4. **Contingent Obligations.** All obligations of Shelby County under this Agreement, other than provisions related to remedies, are subject to the appropriation of the funding for same by the Shelby County Board of Commissioners. Lessee maintenance of the 501(c)(3) status is mandatory.

5. **Property Uses.** The parties acknowledge that the Improvements provided herein are consistent with planned uses for the Bolton Park Complex as determined by the Shelby County Conservation Board and the Tennessee Department of Environment and Conservation, to which reference is made. Shelby County shall diligently assist Bolton Youth Athletic Association in ensuring that the Bolton Park Complex fulfills its purpose for the benefit of Shelby County citizens, limited however, to the terms herein.

6. **Lease of Bolton Park Complex.**

6.01. **Lease.** Shelby County hereby Leases the **USE** of the Bolton Park Complex to Bolton Youth Athletic Association, for the term hereof, for the Permitted Uses, and hereby grants to Bolton Youth Athletic Association the exclusive right to operate and maintain the Bolton Park Complex on the terms and conditions, including limitations, set forth herein. Bolton Youth Athletic Association hereby accepts such lease and agrees to operate and maintain the Bolton Park Complex pursuant to this Agreement, in a manner acceptable to Shelby County, as an area Park Complex with playgrounds, walking trails, baseball and teeball facilities, and within their discretion, for other sports play, training and spectator accommodation. Bolton Youth Athletic Association will take all actions necessary to operate and maintain the Bolton Park Complex in a safe and orderly fashion for all players, spectators, staff, employees, tenants, contractors, vendors, patrons and visitors. The Association shall maintain adequate Liability and General Insurance as provided herein.

6.02 **Shelby-County Usage.** Shelby County, or its designee, and all citizens, shall have the right to use the Park, upon the same terms and conditions as the General Public, subject to fees and prior notice.

6.03 **Lease Income.** Subject to audit by the County, Bolton Youth Athletic Association shall be entitled to receive and retain all monies generated by or from the operations of the Bolton Park Complex. Financial records shall be kept and maintained for four (4) calendar years.

6.04. **Sponsorship and Advertising Payments.** Bolton Youth Athletic Association shall have the right to sell sponsorships and advertising to and within the Bolton Park Complex, provided however that all proposed sponsorships or advertising shall comply with federal, state and local laws.

6.05 **Depreciation.** Bolton Youth Athletic Association shall have the right to claim

depreciation on the value of all Improvements or Permitted Bolton Youth Athletic Association Improvements to the extent allowed for charitable organizations.

6.06 **Tax Status.** Shelby County retains ownership of the fee to the demised premises, and the real estate remains tax exempt. PERSONAL PROPERTY: To the extent that the Association or a permitted sublessee of the Association is assessed with or required to pay any PERSONAL property taxes, Bolton Youth Athletic Association is fully responsible for such use tax. Bolton Youth Athletic Association shall be solely responsible for payment of any and all sales or use taxes due to or assessed by the State of Tennessee relating to Bolton Youth Athletic Association's activities hereunder, including but not limited to sales or use tax on utilities.

7. **Lease Expenses.** Bolton Youth Athletic Association shall pay all expenses incurred with respect to its lease interest or its operation and maintenance of the Bolton Park Complex hereunder, including without limitation, all expenses associated with personnel (including security personnel), maintenance, labor, repair parts, materials, supplies, machinery and equipment (including security equipment). The Association shall also pay all utilities costs associated with operation and maintenance of the Bolton Park Complex, including all electrical energy and demand charges, water, sewer user fees and solid waste pick-up fees. Such utilities currently are and will remain during the term hereof in the name and account of Shelby County. The Athletic Association and Shelby County will cooperate in arranging for the direct payment by the Association of all amounts billed to Shelby County for utilities. Shelby County will have no obligation to fund or pay any utility expenses during the term of this Agreement.

8. **Maintenance.** Bolton Youth Athletic Association's maintenance obligations hereunder include, without limitation, the following:

1. Mowing, fertilizing, reseeding, general maintenance and watering of grass and landscape areas,
2. Litter control and disposal,
3. Custodial and interior maintenance and cleaning of buildings,
4. Relamping of all sports fields and parking lot lighting,
5. Purchase, maintenance, repair and replacement of all necessary machinery and equipment,
6. Maintenance, repair and replacement of all buildings and improvements, including all replacement and major repairs to the walls, floors, ceilings, roofs, infrastructure and structural parts; as well as to mechanical, plumbing, irrigation and electrical systems, including field lighting,
7. Monitoring and maintaining the safety and security of the Bolton Park Complex and all persons therein.

Shelby County shall have the obligation to maintain, repair and replace all asphalt roadway and parking areas, excluding the pedestrian walkways and fencing and the cleaning and striping of pavement areas, within or forming part of the boundary of the Bolton Park Complex.

9. **Operation of the Bolton Park Complex.** Bolton Youth Athletic Association shall operate the Bolton Park Complex in regard to: (i) scheduling use of all facilities therein, and (ii) establishing and collecting all charges, fees and payments associated with all Permitted Uses.

9.01. **Scheduling.** Bolton Youth Athletic Association shall establish all operating hours for the Bolton Park Complex, and shall develop and publish rules, regulations and procedures

for scheduling and reserving use of all facilities thereon. Bolton Youth Athletic Association also shall develop and publish such rules and restrictions as are reasonably necessary to assure that the Bolton Park Complex is operated as a safe and orderly premises.

9.02. Allowable Charges. Bolton Youth Athletic Association may establish and collect charges and fees for all Permitted Uses of the Bolton Park Complex. Shelby County retains the right to review any fees to be charged by the Athletic Association, after ten (10) days notice to the County, given to the Chief Administrative Officer. If the County fails to respond to a Notice of Intent to institute or modify any fees not currently being or previously charged by the Athletic Association prior to the execution of this License Agreement, then the fee is deemed to be approved, and the Bolton Youth Athletic Association may charge for revenue producing events. Shelby County shall have the right to review the fees and charges to be assessed by Bolton Youth Athletic Association with respect to parking and admission to any facilities. However, the Association shall have the sole right to determine the fees and charges to be assessed for products and services to be offered at the concession and food court and vending locations.

The initial list of Allowable Charges will be established by Bolton Youth Athletic Association no later than ninety (90) days after the execution of this Use Agreement. Upon notice to Shelby County, the initial list of Allowable Charges will be attached hereto and incorporated herein by reference as Exhibit 12.02. On or before July 31 of each year thereafter, Bolton Youth Athletic Association may, if it so elects, revise the list of Allowable Charges and submit same to Shelby County, through its chief Administrative Officer for review and comment. Failure by Shelby County to provide written notice of any objections or dissent within the ten (10) day period, the charges shall be deemed acceptance by Shelby County. Shelby County and Bolton Youth Athletic Association

shall then make a good faith effort to resolve any County objections to any proposed list of Allowable Charges. If no such resolution can be reached, then the proposed list of Allowable Charges will be referred to the Contract Administrator or her duly authorized designee, whose decision regarding same will be final.***[Initial proposed fees are attached hereto as Exhibit B]

The Association shall, however, have the right, under any circumstances, to increase Allowable Charges by not more than a fixed factor of 1.05 each year during the term hereof (i.e. may not increase the existing Allowable Charges by more than 5% per year). The Association may not be required to decrease Allowable Charges without its consent, and may also, in its sole discretion, establish actual charges less than the maximum Allowable Charges.

9.03. **Food and Beverage Vending and Concessions.** Bolton Youth Athletic Association shall have the exclusive right to conduct all food and beverage concession and vending operations at the Bolton Park Complex, unless otherwise permitted. No liquor and no mixed drinks containing liquor, excluding beer and wine, shall be sold in the Bolton Park Complex unless permitted by the applicable board or agency. The Association shall observe all directives and procedures that may be established by Shelby County from time to time to prevent the sale of alcoholic beverages to minors.

9.04. **Intellectual Property.** Bolton Youth Athletic Association will be responsible for all advertising, promotional activities, marketing and public relations for the Bolton Park Complex, and will develop all intellectual property rights thereof.

Any intellectual property rights associated with, and any logos developed with respect to the Bolton Park Complex, or any part thereof, utilizing the name or seal of Shelby County in relation to the Bolton Park Complex, shall be the sole and exclusive property of Shelby County

(the "County Intellectual Property"). Subject to the condition set forth in paragraph 9.02 hereof, Shelby County hereby grants to the Association a nonexclusive lease for the term hereof to use the County Intellectual Property in connection with the advertising, promotional activities, marketing and public relations for the Bolton Park Complex, provided however that sublicensing of the County Intellectual Property by Bolton Youth Athletic Association is allowed only if pursuant to Bolton Youth Athletic Association's sponsorship program and in accordance with standard intellectual property licensing terms and conditions to be developed by Bolton Youth Athletic Association and reviewed and approved by Shelby County. Bolton Youth Athletic Association shall have the exclusive lease to use the County Intellectual Property in connection with the sale of merchandise inside the Bolton Park Complex. Bolton Youth Athletic Association agrees to disclose promptly to Shelby County any County Intellectual Property developed or created by Bolton Youth Athletic Association, its principals, employees or agents, or by any person with whom Bolton Youth Athletic Association has contracted for the development or creation of such County Intellectual Property. Bolton Youth Athletic Association hereby conveys to Shelby County all right, title and interest that it may now or hereafter have or claim to have in and to any County Intellectual Property developed by it or on its behalf during the term hereof, and agrees to cause principals, employees, agents or persons or entities with whom it has contracted for the development or creation of such County Intellectual Property to convey to Shelby County any and all right, title and interest that they may now or hereafter have or claim to have in and to any such County Intellectual Property, including without limitation all rights at common law, copyrights, rights of copyright renewal, trademarks and trademark rights.

Subject to the condition set forth in Paragraph 9.02 hereof, Bolton Youth Athletic

Association shall have the right to sell corporate sponsorships at the Bolton Park Complex, including but not limited to the right to have the baseball fields named after such a corporate sponsor (e.g. the "XYZ" Corporation Field or Grounds) for a fixed period of years. The Association may establish all fees and charges for sales of such sponsorships, advertising, promotional concepts, and other uses of the lease granted hereunder during and for the term hereof.

10. **Term.**

10.01. **Initial Term.** This Agreement shall become effective on September 30, 2004. The initial term of this Agreement shall be five (5) years from the effective date hereof (the "Initial Term").

10.02. **Renewal Options.** In the event, prior to the expiration of the Initial Term, Bolton Youth Athletic Association shall have satisfied all obligations hereunder, the Association may exercise options hereby granted in its favor to extend the Initial Term of five (5) years for an additional option of three (3) additional renewal terms of five (5) years each on the same terms and conditions applicable to the Initial Term except as provided herein.

To exercise any renewal option, Bolton Youth Athletic Association shall serve written notice of its intention to renew on Shelby County and the Bolton Youth Athletic Association not less than one hundred twenty (120) days before the expiration of the then current term.

11. **Right of First and Second Refusal.** In the event that the Association shall fail or refuse to exercise any renewal option hereunder, or in the event the Association shall default in its obligations' hereunder, Ellendale Little League Baseball Association shall have the option to assume all rights and obligations of Bolton Youth Athletic Association hereunder for such renewal term or terms or for any remaining unexpired term hereof. In event notice to renew is not given to the

County, Shelby County shall notify the Association in writing that its said option will expire, and the Association shall have thirty (30) days from the date of its receipt of said notice to notify Shelby County of its intention to exercise such option. Upon notice, the Association and Shelby County shall have an additional thirty (30) day period to complete the negotiation of a renewal agreement. If the parties fail to complete such negotiations within such time, as may be extended by mutual agreement of said parties, then such option shall expire and Shelby County shall have the right to proceed to make other arrangements with respect thereto.

12. **Termination.** Either Shelby County or Bolton Youth Athletic Association may terminate this Agreement if the other party fails to fund or pay any monetary obligations hereunder when such funding or payment is due and such non-payment continues for ten (10) business days after notice of nonpayment has been given the defaulting party. Either Shelby County or Bolton Youth Athletic Association may terminate this Agreement if the other party fails to perform any other material obligation created by this Agreement and fails or refuses for thirty (30) days after notice of default has been given the defaulting party to take all steps necessary to cure and rectify same to the reasonable satisfaction of the non-defaulting party. The thirty (30) day period may be extended by either Shelby County or Bolton Youth Athletic Association for an additional period of time, not to exceed ninety (90) days.

Shelby County shall have the option of terminating this Agreement immediately upon written notice to Bolton Youth Athletic Association due to (i) the insolvency of Bolton Youth Athletic Association or the execution of an assignment for the benefit of creditors, (ii) the filing by Bolton Youth Athletic Association for reorganization under any law relating to bankruptcy or insolvency, which is not dismissed within sixty (60) days from the date of filing, (iii) the

appointment of a receiver or trustee to take possession of substantially all of Bolton Youth Athletic Association's assets located at the Bolton Park Complex, (iv) any representation or warranty contained in paragraphs 21.01, 21.02 or 21.04 hereof, or in any certificate made pursuant to paragraph 3.03, 9.01 or 18.03 hereof, shall be knowingly false or misleading in any material respect as of the date made or deemed to have been made, or (v) the cessation of operations and maintenance activities by Bolton Youth Athletic Association, including but not limited to, vacating or abandoning the Bolton Park Complex for a period of ten (10) consecutive days or more. Notwithstanding the foregoing, the parties acknowledge that proper maintenance hereunder may require closure of the fields in the Bolton Park Complex for extended periods of time to allow recovery from extensive use or adverse weather conditions, and the parties agree that any such closure for up to ninety (90) non-consecutive days per year will not constitute an abandonment or a vacating of the Bolton Park Complex for purposes of termination of this Agreement.

Bolton Youth Athletic Association shall, within thirty- five (35) days from the effective date of this Agreement, apply for all leases and permits necessary to operate the facilities and Bolton Park Complex. In the event the Association fails to obtain all necessary approvals of the Permitted Uses to be carried out on the Property within sixty (60) days of the execution of this Agreement, or in the event, for any reason other than the negligence of the Association, any of the Permitted Uses, once approved, cease to be permitted within the first four (4) years of the term hereof, then Bolton Youth Athletic Association shall have the option, exercisable upon written notice to Shelby County and the Bolton Youth Athletic Association within thirty (30) days thereof, to terminate this Agreement without further obligation on its part including but not limited to any obligation to fund any remaining design or construction of any Improvements, effective sixty (60) days from the date

of such notice. In such event Bolton Youth Athletic Association shall be entitled to receive from Shelby County, payment of reasonable and necessary costs and expenses, including but not limited to travel expenses incurred by Bolton Youth Athletic Association as of the termination notice date on the design of the County Improvements or the design or construction of the Required Bolton Youth Athletic Association Improvements, or any part thereof. Alternatively, in its discretion, Bolton Youth Athletic Association may continue to operate and maintain the Bolton Park Complex under this Agreement and the parties shall, within sixty (60) days, meet and endeavor to mutually agree on terms. In the event of a termination of this Agreement by Bolton Youth Athletic Association, Bolton Youth Athletic Association shall have the option to terminate, upon thirty (30) days written notice to Shelby County and the Bolton Youth Athletic Association, the Lease and Use Permit Agreement without further obligation on its part thereunder.

13. **Employees.** All persons employed at the Bolton Park Complex, either on a full or part time basis, during the term of this Agreement or any renewal hereof, will be Bolton Youth Athletic Association's employees or will be employees of Bolton Youth Athletic Association's permitted sublessees or contractors and Shelby County shall have no responsibility for the payment of any wages, salary, taxes and other employment benefits related to any such employees.

Bolton Youth Athletic Association will employ adequate qualified personnel to perform all services required under this Agreement. All operations under this Agreement will be supervised by Bolton Youth Athletic Association.

14. **Ownership of the Property and Improvements.** The Property upon which the Bolton Park Complex is located is and shall remain the property of Shelby County. Bolton Youth Athletic Association's interest in the Bolton Park Complex is a lease-hold interest only. All

permanent improvements, including but not limited to grading, paving, utility infrastructure, buildings, fixtures, and equipment paid for in whole or in part by Bolton Youth Athletic Association during any term of this Agreement, shall similarly become the property of Shelby County upon the expiration of this Agreement. This Lease is subject to any easements or encumbrances upon the property at the time of the execution of the Lease granted herein, including utility easements.

15. **Inspection Rights and Accounting Obligations.**

15.01 **Site Inspections.** Shelby County shall have the right, through its authorized employees or agents, to inspect the Bolton Park Complex, both improved and unimproved, from time to time to determine if it is being operated and maintained in accordance with this Agreement. Upon reasonable notice to the Athletic Association, Shelby County will be allowed ready entry and access to all buildings, premises and areas of the Bolton Park Complex in order to conduct such inspections. Inspections shall be conducted by the County Engineer's inspection shop or other County designee.

All improvements pertaining to the demised premises shall be in accordance with this Agreement and Shelby County Ordinances, including Shelby County Building Codes. Violation and liability for the violation of these covenants, agreement and laws are the responsibility of the Bolton Youth Athletic Association. The Association shall consult with the Shelby County Engineering Office on operation, maintenance and improvements, and the parties will make good faith efforts to agree as to whether adjustments should be made by revising the scope of the County Improvements to accommodate the intended use. Shelby County's denial may be appealed to the Board of Commissioners of Shelby County. Shelby County shall not improperly, or with bad faith, deny any such request for the Athletic Association to construct improvements. The County may not require

Bolton Youth Athletic Association to construct new improvements which are not properly necessary for operation and maintenance comparable to the date that the Use Permit is granted.

15.02. **Books and Records.** The Association will maintain all books, documents, papers, accounting records and other documentation pertaining to all monies received or paid hereunder, and will make such materials available at their offices located in Shelby County, Tennessee at all reasonable times during the period of this Agreement and for four (4) years from the date of payment or receipt, for inspection by Shelby County or by any other governmental entity or agency participating in the funding of this Agreement, or any authorized agents thereof. All such inspections or audits will be conducted during normal working hours, and on mutually agreeable dates and locations.

15.03. **Accounting and Operations Reports.** The parties agree that the Association shall provide the County sufficient records, as requested, for the sake of financial audits of the operation of the Bolton Youth Athletic Association. Said audit may be prepared internally by the County or by a certified public accountant in accordance with GAAP, within six (6) months after the end of Bolton Youth Athletic Association's fiscal year.

Bolton Youth Athletic Association shall also provide Shelby County an annual report on the use and operations of the Bolton Park Complex. Such reports shall be prepared on the basis of Shelby County's fiscal year.

16. **Insurance.** Bolton Youth Athletic Association will maintain the following insurance coverage showing Shelby County as an additional insured thereon:

a. Commercial General Liability coverage with limits of a minimum of \$1,000,000.00 single limit per occurrence. This includes coverage for premises-operations/products-completed

operations, and includes coverage for spectators, participants, and the complete operations. The Athletic Association's insurance coverage shall be the primary liability coverage and the County's liability coverage on the premises shall be secondary. Shelby County, its elected officials, appointees, agents and employees will be included as additional insureds.

b. Minimum of \$ 1,000,000.00 automobile liability for any one accident or loss on all owned, hired or non-owned vehicles. Shelby County, its elected officials, appointees, agents and employees will be included as additional insureds.

c. Directors and officers Liability in a minimum limit of \$1,000,000.

d. Worker's Compensation and Employers Liability Coverage as required by Tennessee statutes.

e. Bolton Youth Athletic Association shall maintain all risk property insurance, on real property at 7065 and 7067 Brunswick Road, including the ballfields and concessions area, and all improvements and betterments thereon. Bolton Youth Athletic Association will be responsible for paying its own deductible, if applicable to a claim. County Government shall be listed as an additional insured on all coverage maintained by the Association. Further, to effectuate the above term, Shelby County will maintain the current and continuing coverage on the premises, which includes \$65,000 on the civic center building, \$5,000 on the contents therein, and \$80,000 on each of the three ballfields and lighting systems. The County will forward the premium due notice to the Association for their timely payment. The Association shall be listed as an additional insured on the County policy.

f. Bolton Youth Athletic Association will establish an insurance program to ensure that participants in all organized sports activities have insurance coverage for either medical/accidental

insurance or a special risk accidental policy, at either the participants' or Bolton Youth Athletic Association's expense.

g. Shelby County does not waive its right of subrogation against Bolton Youth Athletic Association or any permitted sublessees, contractors or vendors that Bolton Youth Athletic Association engages hereunder.

h. Bolton Youth Athletic Association shall also require all permitted sublessees, contractors (construction or otherwise) or vendors it engages, to carry and maintain during the term of their said engagement the insurance specified as provided herein above or in any part of this Lease Agreement, where relevant. And to this end, the Association shall provide to and for the benefit of the COUNTY, its elected officials, appointees and employees, an authorized rider and certificate of insurance naming the COUNTY its elected officials, appointees, agents and employees as additional insureds and certificate holders under this policy. The limits of this rider shall remain the same in form and manner as the original contract.

17. **Indemnity.**

17.01. Bolton Youth Athletic Association shall indemnify, defend, save and hold harmless Shelby County and their respective elected officials, appointees, officers, agents, and employees from all suits, claims, actions or damages of any nature brought because of, arising out of or due to the breach of this Agreement by Bolton Youth Athletic Association, its subcontractors, agents or employees or due to any negligent act or occurrence of omission or commission of Bolton Youth Athletic Association, its subcontractors, agents, or employees which occurs pursuant to the performance of this Agreement and this indemnification shall survive the termination or expiration of this Agreement. Neither Bolton Youth Athletic Association nor its

employees will be liable under this paragraph for damages arising out of injury or damage to persons or property directly caused by or resulting from the negligence of Shelby County or the Bolton Youth Athletic Association or any of their respective officers, agents or employees.

17.02. Shelby County shall not have any obligation to provide legal counsel or defense to Bolton Youth Athletic Association or its subcontractors, agents or employees in the event that a suit, claim, or action of any character is brought by any person not party to this Agreement against Bolton Youth Athletic Association or its subcontractors, agents or employees as a result of or relating to Bolton Youth Athletic Association's obligations under this Agreement.

17.03. Neither Shelby County nor the Bolton Youth Athletic Association shall have any obligation for the payment of any judgments or the settlement of any claims against Bolton Youth Athletic Association or its subcontractors, agents or employees as a result of or relating to Bolton Youth Athletic Association's obligations under this Agreement.

17.04. Bolton Youth Athletic Association shall immediately notify **Shelby County, c/o Shelby County Government, Contracts Administration, 160 N. Main St., Suite 1109, Memphis, Tennessee, 38103**, of any written claim or suit made or filed against Bolton Youth Athletic Association or its subcontractors, agents or employees regarding any matter resulting from or relating to Bolton Youth Athletic Association's obligations under this Agreement, and will cooperate, assist, and consult with Shelby County in the defense or investigation of any written claim, suit or action made or filed against Shelby County as a result of or relating to Bolton Youth Athletic Association's performance under this Agreement.

18. **Representations and Warranties.**

18.01. Each party represents to the other with respect to itself that the execution and

performance of this Agreement has been duly authorized by all necessary resolutions and corporate or partnership or other such action, and this Agreement constitutes the valid and enforceable obligations of Shelby County and the Bolton Youth Athletic Association.

18.02. Bolton Youth Athletic Association certifies that it is qualified to do business in the State of Tennessee.

18.03 Bolton Youth Athletic Association certifies that it will take such actions as, from time to time, maybe necessary to remain qualified to do business in the State of Tennessee and it shall obtain, at its expense, all leases, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Agreement, including but not limited to all beer or liquor leases required by state or local authorities.

18.04. Bolton Youth Athletic Association warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Bolton Youth Athletic Association, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for Bolton Youth Athletic Association any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Shelby County will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift or other consideration.

18.05. Shelby County represents and warrants that to the best of its knowledge, information and belief there are no environmental hazards on or affecting the Property which would limit or restrict Bolton Youth Athletic Association's ability to perform this Agreement including the Permissible Uses as contemplated herein.

19. **Assignment.** Assignment, subleasing or transfer of all or part of Bolton Youth Athletic Association's interest in and to this Agreement is prohibited unless by written consent of Shelby County. Association may sublease portions of the Bolton Park Complex on which Permitted Bolton Youth Athletic Association Improvements are to be constructed on relevant terms substantially similar to those of this Agreement. Shelby County shall have the right to approve each proposed sublessee on the basis of experience, reputation and financial strength. No subletting, assignment or transfer shall relieve Bolton Youth Athletic Association from performance of its duties under this Agreement.

20. **Amendment.** This Agreement may be modified only by amendment made in writing and signed by both parties.

21. **Notices.** All notices and approvals required or permitted hereunder shall be written and shall be delivered by: a) fax or by a nationally recognized overnight delivery service; and b) by U.S. certified mail, return receipt requested, to the following addresses or such other addresses of which any of the parties shall give notice from time to time during the term hereof:

To: Shelby County Government
Chief Administrative Officer
Shelby County Government 160 N. Main Street, Suite 850 Memphis, Tennessee
38103 Fax: (901) 545-3490
With a copy to: Contract Administrator Shelby County Government 160 N. Main
Street, Suite 550, Memphis, Tennessee 38103 Fax: (901) 545-3999

To: President
Bolton Youth Athletic Association
Phone: *****
Fax: (813) 620-3377 ????

22. **Independent Contractor.** Nothing in this Agreement shall be deemed to represent

that Bolton Youth Athletic Association, or any of its employees or agents, are the agents, representatives, or employees of Shelby County. Bolton Youth Athletic Association will be an independent contractor over the details and means for performing its business. Anything in this Agreement which may appear to give Shelby County the right to direct Bolton Youth Athletic Association as to the details of the performance of its business or to exercise a measure of control over Bolton Youth Athletic Association is for purposes of compliance with local, state and federal regulations and means that Bolton Youth Athletic Association will follow the desires of Shelby County only as to the intended results of the scope of this Agreement.

23. **Discrimination.** Bolton Youth Athletic Association agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subject to discrimination in the performance of Bolton Youth Athletic Association's duties under this Agreement or in Bolton Youth Athletic Association's employment practices. Bolton Youth Athletic Association shall, upon request, show proof of its effort to comply with the foregoing and shall post notices of non-discrimination in conspicuous places available to all employees and applicants.

Shelby County reserves the right to investigate any claims of illegal discrimination in the operation or maintenance of the Athletic Association and in the event a finding of same is made and upon written notification to the Association, the Association covenants to take all steps necessary to cure and rectify same to the reasonable satisfaction of Shelby County. In the event Bolton Youth Athletic Association fails or refuses to so cure said discrimination, then Shelby County may terminate this Agreement in accordance with the termination provisions herein.

24. **Conflict of Interest.** Bolton Youth Athletic Association covenants that it has no

public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its obligations under this Agreement. Bolton Youth Athletic Association may in the future, through affiliated entities, operate, manage or develop other multi-sport complexes within the United States of America or internationally. Bolton Youth Athletic Association warrants that no part of any contract amount provided herein, nor any part of operating funds created or expended in the operation of the Bolton Park Complex, shall be paid directly or indirectly to any officer or employee of Shelby County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to Bolton Youth Athletic Association in connection with any work contemplated or performed relative to this Agreement.

25. **Choice of Law.** Bolton Youth Athletic Association is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state and local laws, ordinances, and regulations in any manner affecting the conduct of the work. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement, Shelby County and the Bolton Youth Athletic Association agree that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the Courts of the State of Tennessee, or in the United States District Court, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of such courts in Shelby County, Tennessee.

26. **Prevailing Party.** Any party shall be entitled to recover from the other party or parties all costs, including reasonable attorney fees and litigation expenses, incurred by such party in

successfully enforcing its rights hereunder.

27. **Entire Agreement.** This Agreement contains the entire understanding among the parties with respect to the Bolton Park Complex and there are no other promises or conditions in any other agreements between the parties, whether oral or written, related to the Bolton Park Complex. This Agreement supersedes any prior written or oral agreements between or among all or any of the parties with respect to the Property, the Bolton Park Complex, except the Bolton Park Complex Maintenance Agreement, which continues to govern the rights and obligations of the parties with respect to the Bolton Park Complex.

28. **Act of God.** No party shall be liable to any other party or parties for any delay or damage or any failure to act (other than payment of money) as a result of strikes, acts of God or other causes beyond the control of the parties, and delay as a result of the above causes shall not be deemed to be a breach of or failure to perform under this Agreement.

29. **Unenforceability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to have been written, construed and enforced as so limited.

30. **No Waiver.** The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

31. **Approvals.** In all instances referenced in this Agreement in which an approval of one party is required, such approval shall be neither unreasonably withheld, delayed nor

conditioned.

32. Relationship. Nothing in this Agreement shall be deemed to create a joint venture or partnership between or among any of the parties. The parties acknowledge that the Bolton Youth Athletic Association enters into this Agreement solely for purposes of its obligations in paragraphs 2.02, 4 and 14, and those relevant provisions related to the construction of Improvements to the Bolton Park Complex. The Bolton Youth Athletic Association waives any and all claims hereunder to any right, title or interest in or to the Bolton Park Complex, whether lease hold or otherwise.

33. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

APPROVED AS TO FORM:

Jose Williams

Assistant County Attorney

COUNTY OF SHELBY, TENNESSEE

By:

A C Wharton
A C Wharton, Mayor of Shelby County

Bolton Youth Athletic Association

Gene Harrison
Gene Harrison, President

Date:

October 29, 2004

Date:

9-15-04

**ADDENDUM TO LEASE AGREEMENT BETWEEN SHELBY COUNTY
GOVERNMENT AND BOLTON YOUTH ATHLETIC ASSOCIATION**

This addendum to the Lease Agreement specified above is to:

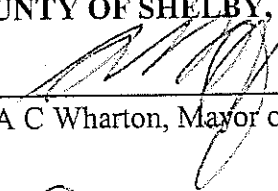
1. Clarify that Section 2.02, relating to fees, does not obligate the Bolton Civic Association to pay any fees for their use of the civic center so long as their continued use is consistent with and not in excess of their prior level of use before the consummation of this Agreement. This exemption is in consideration of the past and historical benefit bestowed upon both Shelby County in general and the BYAA by the Civic Association.
2. The Bolton Youth Athletic Association shall initially and annually thereafter submit acceptable proof verifying that their 501(c)(3) charitable status remains active.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement.

APPROVED AS TO FORM:

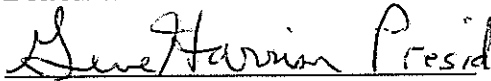

Assistant County Attorney

COUNTY OF SHELBY, TENNESSEE

By: 
A C Wharton, Mayor of Shelby County

Date: October 29, 2004

Bolton Youth Athletic Association

 President
Gene Harrison, President

Date: 10-11-04